

FAIR EMPLOYMENT & HOUSING COMMISSION

455 GOLDEN GATE AVENUE, SUITE 10600
SAN FRANCISCO, CA 94102
(415) 557-2325 FACSIMILE (415) 557-0855
www.fehc.ca.gov



MINUTES
463rd COMMISSION MEETING

August 29, 2006
California Tower
3737 Main Street, Alvarado Room
Riverside, California

PRESENT:

Chairman George Woolverton, Commissioners Linda Ng, Patrick Adams, Tamiza Hockenhull and Carol Freeman; and Commission staff Ann Noel, Caroline Hunt, and Loc D. Tra; State and Consumer Services Agency (Agency or SCSA) Secretary Rosario Marin; Senior Assistant Attorney General Louis Verdugo, Jr.; Department of Fair Employment and Housing (Department or DFEH) Director Suzanne Ambrose; and members of the public.

Chairman Woolverton called the meeting to order at 10:00 a.m.

OPEN SESSION

Commissioner Hockenhull joined the meeting at 10:05 a.m.

REVIEW OF AGENDA

Chairman Woolverton moved, Commissioner Adams seconded, and the Commission voted 4:0 to accept the agenda. [06-31]

REVIEW OF THE MINUTES

Chairman Woolverton moved, Commissioner Hockenhull seconded, and the Commission voted 4:0 to adopt the Amended Minutes and Transactions of the 462nd meeting as submitted. [06-32]

WELCOME TO STATE AND CONSUMER SERVICES AGENCY
SECRETARY ROSARIO MARIN

Chairman Woolverton announced that it was a great honor to have State and Consumer Services Agency Secretary Rosario Marin attend the meeting as a special guest.

Agency Secretary Marin introduced herself to the Commission and stated that she was glad she was able to attend the meeting. She stated that it was very important for her to understand what is going on with all the SCSA departments. Secretary Marin thanked the Commission for the great work it has done, and what it will do in the future.

Secretary Marin complimented the individual Commissioners' dedication and the job that ELAS Ann Noel does keeping the SCSA abreast of Commission activities.

Secretary Marin encouraged a relationship with each of the Commissioners because she believes in open government and open communications. She will do everything in her power to provide support and to help the Commission do its important job.

Chairman Woolverton thanked SCSA Secretary Marin for her presence and for the enthusiasm she brought to the meeting.

COMMISSIONERS' REPORTS

Chairman Woolverton reported on an article he has written on the intersection of workers' compensation and reasonable accommodation for disabilities in the workplace.

Commissioner Freeman joined the meeting at 10:20 a.m.

ELAS Noel informed the Commission that Vice-Chair Herschel Rosenthal was unable to attend the meeting because of his health. ELAS Noel suggested that the Commission should honor Vice-Chair Rosenthal for his work on both the Commission and the Legislature with a resolution. Chairman Woolverton moved, Commissioner Hockenhull seconded, and the Commission voted 5:0 to honor Vice-Chair Rosenthal with a resolution. [06-33] Chairman Woolverton offered to cover the expenses.

ELAS Noel stated that Commissioner St. Hilaire's has informed the Commission that she is resigning from the Commission because of time conflicts with her job and her family. Commissioner St. Hilaire remains interested and passionate about civil rights and the Commission's work. Commissioner St. Hilaire will continue to assist ELAS Noel with ideas for planning the Commission's 50th Anniversary Celebration.

50th ANNIVERSARY PLANNING

ELAS Noel discussed the Commission's plans for the 50th Anniversary Celebration of the enactment of the Fair Employment and Housing Act (FEHA).

September 18, 2009 will mark the 50th anniversary of the enactment of FEHA, then called the Fair Employment Practices Act. This anniversary is an opportunity to celebrate civil rights with all three branches of California state government: the Administration, the Legislature, and the judiciary, as well as the public. FEHA's 50th anniversary gives the Commission the chance to look back and celebrate the past 50 years' civil rights' achievements,

to look forward to what civil rights' challenges still await us, and to reaffirm the importance of civil rights with all Californians.

On behalf of the Commission, staff has submitted to SCSA a budget change proposal (BCP) to augment the FEHC's 2007-08 budget to give the Commission seed resources to plan for a major 50th anniversary celebration. Staff has suggested a number of ideas for the event, the Commission working with the Governor, the SCSA, the DFEH and other parts of state government, the Legislature, the judiciary, various levels of state education, business, etc. to make this an event that brings the entire state together to celebrate civil rights.

The Commission, SCSA Secretary Marin, and Commission staff discussed ideas for the event.

SCSA Secretary Marin suggested an organization that can plan a celebratory event.

Commissioner Hockenhull suggested sponsoring an essay contest for students on the topic, "What do civil rights mean?"

Commissioner Adams suggested that the Commission suggest that the state sponsor a history week on civil rights issues.

ELAS Noel suggested that the Commission create a subcommittee to plan the 50th anniversary celebration. Chairman Woolverton, and Commissioners Hockenhull and Ng volunteered to join this subcommittee.

EXECUTIVE AND LEGAL AFFAIRS SECRETARY'S (ELAS) ACTIVITY REPORT

ELAS Noel discussed the following items from the ELAS Activity Report:

FEHC Sexual Harassment Training: FEHC staff held its sexual harassment training for FEHC Commissioners on August 28, 2006 from 3:00 to 5:00 p.m.

2007-08 Budget: Staff had submitted to SCSA four BCPs for the Commission's 2007-08 budget; for Commission travel expenses and pay, for IT support for the FEHC website and other "tech" issues, for ALJ training, and for FEHA's 50th anniversary celebration planning.

FEHC Website: The Commission continues to augment and improve the FEHC website. Staff had proposed posting on the website a "Guide for Unrepresented Respondents" to assist individuals at hearings before the Commission ALJs and asked for feedback from the Commissioners and DFEH on the draft submitted

Commission staff are also leading an effort to update the state's "Labor and Employment Portal," a hyperlink on the state of California's government website which provides the public with information about labor and employment issues.

Mediation, Adjudication and Settlement Conferences: Since the January 1, 2006, the Department had issued 47 accusations, 26 since the last update to the Commissioners in May 2006. Since January 1, 2006, FEHC ALJs had presided in 29 days of contested hearings, conducted 22 telephonic case management conferences, conducted 9 settlement conferences and mediations, and handled 7 law and motion matters.

Dates for Upcoming Commission Meetings: The Commission's next scheduled Commission meetings for the rest of 2006 were set for October 2nd (telephonic at various locations) and November 14th, in Sacramento.

Commission Work Plan: Staff suggested that the Commissioners discuss establishing several working committees to work on Commission priorities such as legislation, outreach – public forums and regulations. Commissioner Adams agreed to work on legislation, Commissioners Freeman and Ng on outreach, and Commissioner Freeman agreed to work on regulations.

New Administrative Law Judges: The Commission had received many applications for the ALJ positions. Interviews are underway as part of the selection process.

DEPARTMENT'S REPORT

DFEH Director Suzanne Ambrose reported that DFEH's and the Governor's proposal to augment DFEH's budget has been approved by the Legislature. The approved budget will allow DFEH to hire additional staff, open additional offices in Southern California, upgrade its filing and appointment system, and pay for printing materials.

In 2007, the Department will hire outside private consultants to help create a new 24-hour public access, online filing and appointment system to relieve the workload of its Call Center. Commissioner Freeman referred to California Department of Motor Vehicle's website as a template.

SCSA Secretary Marin left the meeting at 11:10 a.m.

DFEH Director Ambrose announced the DFEH attended a Department of Housing and Urban Development (HUD) - sponsored national fair housing conference in Anaheim, where DFEH reported and received much attention for DFEH's one million dollar settlement victory in the Carper housing disability accommodation case.

The Department is working hard to close its Equal Employment Opportunity Commission (EEOC) cases to meet the federal fiscal year deadline at the end of September. With Chief Deputy Wanda Kirby's help, Ambrose was hopeful that the Department would meet the deadline.

ATTORNEY GENERAL'S REPORT

Deputy Attorney General Louis Verdugo Jr. introduced himself to Commissioners Hockenhull and Freeman. He also introduced new Deputy Attorney General Michael Newman

to the Commission. Verdugo discussed highlights of the activities of the Civil Rights Enforcement section of the Attorney General's office.

The Attorney General's (AG) office budget for the new fiscal year has funded a new program, "Underground Economy Statewide Investigations and Prosecutions" within the Civil Rights Enforcement section. The program will focus on bringing criminal and civil cases to attack the "underground economy" which is flourishing in the state to the detriment of workers, legitimate business enterprises and taxpayers. These businesses operate outside of the law, and do not comply with workers' compensation, business taxes, and wage and hour laws. This new program is strongly supported by the Governor and Legislature. To lead this program, Verdugo reported that Deputy Attorney General Ralph Lightstone had recently transferred to the AG's Civil Rights Enforcement section from the AG's Executive Program, where he served as the AG's Special Counsel for labor laws.

Verdugo reported on an Unruh Act civil rights case that is now before the California Supreme Court. In this privately brought case, the plaintiff alleges that a medical group refused to provide her with her requested fertility treatment because they deemed that doing so was inconsistent with the doctor's religious beliefs. In June 2006, the AG's office submitted a letter to the State's Supreme Court urging it to take this case and decide the issue. Later that month the Supreme Court agreed to hear the case. The issue before the Court is: Does a physician have a constitutional right to refuse on religious grounds to perform a medical procedure on a patient based on a patient's sexual orientation?

Verdugo reported that last fall, the AG filed lawsuits against Kern and Santa Cruz Counties alleging that both counties were not providing adequate access to persons with disabilities at polling sites on election day. These lawsuits were filed after a lengthy investigation, in which the AG conducted several access surveys at four different elections. Since the cases were filed, the AG surveyed the November Special Elections and again at the June Primary and found both counties were still in violation of access laws. As a result, the AG filed in each of the cases a Motion for a Preliminary Injunction seeking to compel the counties and their registrars to make best efforts to bring certain polling sites which are problematic into compliance at the next November General Election. The AG also asked the Supreme Court to order the counties to pay for an independent monitor to conduct another survey at the November elections.

Commissioner Freeman brought up the issue of polling place access. For instance, she can not easily use her assigned polling place because of the number of people using it. Thus, she votes by mail. With this problem, some people don't vote because voting by mail is complicated as opposed to going to a polling place where there are people to assist you. To her, this poses a problem for non-English speaking people. Verdugo replied that this is not a disability issue and those with such concerns should contact the Elections Division at the Secretary of State's Office.

In March 2006, the Civil Rights Enforcement Section on behalf of the California Native American Heritage Commission (CNAHC) filed a lawsuit in Superior Court in San Diego County to halt the construction of the Orange County - San Diego County toll road,

which was planned to be built adjacent to a California Native Americans indigenous village. This site is still being used for burial and ceremonial activities by Native Americans. In addition to this lawsuit, the AG and the State Park and Recreation Commission have filed a lawsuit for violations of California's Environmental Quality Act.

ELAS Noel announced that Commissioner Freeman recused herself from any participation as a Commissioner on discussion or voting on the Harassment Training regulations.

The Commission took a 10-minute recess at 11:25 a.m.

The Commission reconvened at 11:35 a.m. Commissioner Freeman remained absent from the room.

HARASSMENT TRAINING REGULATIONS

The Commission discussed revisions of the Harassment Training Regulations, i.e., the June 20, 2006, Revised Harassment Training and Education Regulations (without underlining and strikeout from the original December 16, 2006, proposed regulations).

Chairman Woolverton moved, Commissioner Hockenhull seconded, and the Commission voted 4:0 to modify the language of section 7288.0(a)(8) to read: "Supervisory employees" or "supervisors" under this section are supervisors located in California defined under Government Code section 12926, subdivision (r). The Commission agreed to delete subsection (A) and to make subsection (B) the second sentence of 7288.0(a)(8). [06-34]

Chairman Woolverton moved, Commissioner Ng seconded, and the Commission voted 4:0 to reinstitute the "training year" tracking method, utilizing the language suggested by commentator Fenton & Keller under section 7288.0(b)(1). [06-35]

Chairman Woolverton moved, Commissioner Adams seconded, and the Commission voted 4:0 to adopt the revised regulations submitted by staff, with the above modifications and to submit these modified regulations for public comment. [06-36] A copy of the August 29, 2006 modified regulations with all revisions as adopted at the August 29, 2006, meeting is attached to these minutes as Exhibit A.

The Commission rescheduled further discussion and adoption of the revised Harassment Training Regulations to an October 2nd telephonic Meeting after receiving and considering public comment to its August 29, 2006, revised regulations.

Commissioner Freeman rejoined the meeting at 12:00 p.m.

LEGISLATION

FEHC ALJ Caroline Hunt informed the Commission that AB 2095 (Niello), which amends the sexual harassment training statute, Government Code section 12950.1 by

specifying that only California supervisors need be trained, was submitted to the Governor's office at 5 p.m. on August 28, 2006.

The Commission continued discussion of the outstanding FEHA-related 2006 bills and other bills of interest which are currently pending before the Legislature, e.g., AB 1897, AB 2095, AB 2371, AB 2420, AB 2800, AB 2980, SB 1441, and SB 1745.

The deadline for the Legislature to pass specific pieces of legislation is August 31, 2006, and the Governor has until September 30, 2006, to sign, veto, or allow bills to become law.

CLOSED SESSION

The Commission entered Closed Session at 12:15 a.m.

Only the Chairman, Commissioners, Senior Assistant Attorney General Louis Verdugo, Jr., and Commission staff were present.

The Commission discussed hearings and litigation and deliberated on pending cases.

a. Post-Decision: Compliance

(1) DFEH v. Prunty's New Beginnings (Henson/Project Sentinel)

The Commission resolved that it needed further briefing from the parties and directed staff to issue an order requesting further briefing.

b. Administrative Adjudication: Pending Decisions

(1) DFEH v. Los Angeles Fire Department (Killian)

Chairman Woolverton moved, Commissioner Hockenhull seconded, and the Commission voted 5:0 to adopt the proposed decision. [06-37]

(2) DFEH v. Peter Muna (Williams)

Chairman Woolverton moved, Commissioner Adams seconded and the Commission voted 4:1 to adopt the proposed decision. [06-38] Commissioner Freeman dissented on the amount of emotional distress damages.

(3) DFEH v. Acapulco Restaurant (Sparacino)

Commissioner Carol Freeman recused herself from any participation as a Commissioner in the discussion of this case.

Chairman Woolverton moved, Commissioner Ng seconded, and the Commission

voted 4:0 to adopt the proposed decision. [06-39]
(4) DFEH v. San Francisco BART (Bartley)

Chairman Woolverton moved, Commissioner Hockenhull seconded, and the Commission voted 5:0 to adopt the proposed decision. [06-40]

Chairman Woolverton moved, Commissioner Adams seconded, and the Commission unanimously voted to end Closed Session at 1:00 p.m. [06-41]

PUBLIC FORUM – CIVIL RIGHTS ISSUES IN THE INLAND EMPIRE AREA

The Commission held a forum to discuss civil rights issues in the Inland Empire area at 1:00 p.m. The following section of the Minutes summarizes the remarks of the speakers.

Jennifer Vaughn-Blakely, The Group. Vaughn-Blakely spoke on discrimination in the hiring practices of the City of Riverside, especially against the African-American community. She reported that in 2004 and 2005, five top management level employees of color were dismissed or demoted by the incoming City Manager. In 2006, the City's management team showed some ethnic diversity, but there is no evidence that employees of color are mentored or developed so they may be successful in their time with the City of Riverside. For many years there have been allegations of discrimination in the hiring practices in the city's public works department. These allegations have resulted in lawsuits. Furthermore, Vaughn-Blakely reported that the Attorney General's office is very familiar with the City of Riverside's employment practices. Vaughn-Blakely asked the Commission to monitor, intervene, and engage the City of Riverside in fair employment practices.

Rhonda Strout, City of Riverside. Strout spoke on the City of Riverside's continuing efforts to improve the diversity in its work force. She provided charts and statistics reflecting the progress made from May 2005 to August 2006. Strout stated that the City of Riverside is committed to provide equal employment opportunity for all.

Gloria Lopez, City of Riverside Human Resources Board. Lopez spoke on the concerns the Human Resources Board has regarding the terminations of the top-level employees of color in 2005 and 2006, as testified to by Vaughn-Blakely. Lopez reported that these positions were filled without open recruitment, using temporary appointments, thus skirting the City's personnel policies. There were no interviews and no competition. Persons of color are not given an opportunity to advance. The City Manager filled at-will positions with people that he knew from his prior employment, without interviews or competition, such as the new Human Resources Director, Rhonda Strout. These persons, in turn, are beholden and very loyal to the City Manager and are not likely to question his policies or hiring decisions.

Mike Kinsman, Western Inland Empire Coalition Against Hate. Kinsman spoke on hate crimes in Riverside, particularly against gays, bisexuals, and transgendered individuals. The Coalition was created to keep the community informed of hate crimes and hate incidents. The Coalition is a bi-county partnership and liaison between law enforcement agencies, human relations commissions, schools, religious organizations, civil rights groups, community services groups, and the community dedicated to eradicating hate crimes and promoting diversity to achieve respect and

tolerance amongst all citizens.

Brian Levin, California State University at San Bernardino. Levin spoke on hate crimes against undocumented persons and homeless people in the Inland Empire, Riverside, and other California cities. Levin reported that this type of crime is not just unique to California but is rampant throughout the country. Most of these crimes are perpetrated by persons with housing on the homeless and are not reported to the police. These crimes, unlike the ones against people of different religions, sexual orientations, races, etc., are not clearly protected by the law. Many homeless are disabled, mentally ill, people of color, or of a lower socio-economic class. The speaker submitted that these individuals deserve dignity or, at the very least, the protection of criminal laws, which protect all of us.

Rose Mayes, Fair Housing Council of Riverside County. Mayes spoke on the Riverside Fair Housing Council's mission to provide comprehensive services which affirmatively address and promote anti-discrimination, fair housing rights and further other housing opportunities for all persons, without regard to race, color, national origin, religion, sex, familial status (i.e., families with children), disability, ancestry, marital status, source of income, sexual orientation or other arbitrary factors.

Most importantly, the Council upholds state and federal fair housing laws. Mayes suggested that when the Council refers cases to the Department of Fair Employment and Housing, the Department should increase the monetary penalties to the highest possible amount to hit the violators "where it counts."

Mayes discussed the problems that low income homeowners and tenants face finding affordable housing in the Inland Empire. There is not enough low income housing to serve the needs of Riverside and San Bernardino counties. Wages paid in this area are not in "sync" with housing costs: workers need down-payment assistance. In the past few years, lenders have given low income homeowners interest-only loans so that these homeowners could afford to buy. These homes often go into foreclosure because if anything goes wrong, or when rates increase, homeowners cannot afford to make their mortgage payments.

Mayes also reported that the Fair Housing Council is seeing many retaliatory evictions where clients are served with 30-day notices if they complain about bad housing conditions.

Walter Hawkins, Rialto Unified School District. Hawkins spoke on housing issues concerning the African American community in San Bernardino, where a lack of housing is a major factor effecting employment and education in the county. Hawkins testified that municipalities and boards of supervisors are using low-income housing funds for non-low-income purposes.

Commissioner Freeman left the forum at 2:45 p.m.

Katie Greene, Law Offices of Katie Greene, Secretary for "The Group". Greene spoke about a problem with landlord-tenant legal relations. Currently, tenants are immediately placed on a landlord-shared database of tenants with unlawful detainers, when an unlawful detainer (U/D) action is merely filed against the tenant, even if the tenant ultimately prevails in court. This needs to be changed.

Greene also testified that Riverside City Council meetings are not following the Brown Act, making it difficult or impossible for residents to participate. The “Consent” calendar, where no discussion is allowed, is overloaded with items by the City, while the “Non-Consent” calendar, where discussion is allowed, is under-loaded.

Greg Hagans, President, Service Employee International Union Local 1997. Hagans spoke on his lawsuit against the City of Riverside for discrimination, the resulting retaliation, the “ineffectual” Human Resources (HR) department he has dealt with, and his opinion that city officials conspired against individuals like himself.

Hagans has been part of the lawsuit against the City of Riverside for 8 ½ years. During that time, the City has, according to the speaker, drawn out the case, “picking off” individual plaintiffs, terminating employees one by one. Some settled their claims. One judge threw out the case and then retired. The City has no plan for an individual with a disability.

Hagans’s disability affects his hands, so that he has to record meetings using a tape recorder. He was accused of hiding the recorder and secretly taping a meeting. He asked HR for reasonable accommodation but they have no paperwork for his request. Moreover, he asserts that they are not geared towards helping employees with disabilities.

Christina Duran, H.O.P.E. Duran spoke on her housing concerns in the City of Riverside, where low-income people are discriminated against and looked down on by landlords and apartment owners based on their low-income status. Furthermore, Riverside has no rent control and expensive homes and apartments are sprouting up all over the city. Neither Riverside nor San Bernardino County has a commitment to provide low-income housing. Instead both counties seem determined to seek a “better clientele,” revamping buildings, raising rents, and pushing low-income persons out. She asked, “Where are these people supposed to go?”

ADJOURNMENT

The Commission adjourned its meeting and the forum at 3:08 p.m.

Date: August 29, 2006

GEORGE WOOLVERTON
Chairman

ANN M. NOEL
Executive and Legal Affairs Secretary

**REPORT OF TRANSACTIONS
OF THE 463rd COMMISSION MEETING
August 29, 2006
Riverside, California**

THE COMMISSION AT THIS MEETING TOOK THE FOLLOWING ACTIONS:

- 06-31 Approved the meeting's agenda.
- 06-32 Approved the Amended Minutes and Transactions of the 462nd meeting as submitted.
- 06-33 Voted 5:0 to honor Vice-Chair Rosenthal with a resolution.
- 06-34 Voted 4:0 to modify 7288.0(a)(8) as described in the body of the minutes.
portion of Commissioner Freeman recused herself and did not participate or attend this
 the meeting.
- 06-35 Voted 4:0 to modify 7288.0(b)(1) as described in the body of the minutes.
- 06-36 Voted 4:0 to adopt the revised regulations as submitted by staff and modifications at
the August 29, 2006, meeting.
- 06-37 Voted 5:0 to adopt the proposed decision in DFEH v. Los Angeles Fire Department
(Killian)
- 06-38 Voted 4:1 to adopt the proposed decision in DFEH v. Peter Muna (Williams)
Commissioner Freeman dissented.
- 06-39 Voted 4:0 to adopt the proposed decision in DFEH v. Acapulco Restaurant
(Sparacino). Commissioner Freeman recused herself and did not participate in this
portion of the meeting.
- 06-40 Voted 5:0 to adopt the proposed decision in DFEH v. San Francisco BART (Bartley)
- 06-41 Voted 5:0 to end Closed Session.

Prepared By

Loc D. Tra
Clerk of the Commission